IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

AS.No. 96 of 1991(C)

PLAINTIFF/APPELLANT:

CHERIYANBATH KANDIYIL THAMASIKKUM
MOLANKEERI MOOSSA, S/O.ABOOBACKER,
VELOOR AMSOM DESOM OF QUILANDY TALUK.

BY ADV. SRI JOSE JOSEPH,V.V.ASOKAN,

DEFENDANTS/RESPONDENTS:
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1. VETTIKKATTU KUNIYIL ASSIA UMMA, D/O.MAMMU, CHEMANCHERY AMSOM AND DESOM, QUILANDY TALUK (DIED)

2. PURATHORA CHOYIKUTTY, S/O.THACHAN, ELATHOOR AMSOM AND DESOM OF KOZHIKODE TALUK (DIED)

3. POOKKATTU PARAMBIL VALIYIL PATHUMMA, D/O.MAMMU, CHEMANCHERRY AMSOM AND DESOM OF QUILANDY TALUK.

ADDL.4 JANAKI. (DIED)

5. ARJUNAN

6. JANARDANAN

7. VISWAM

8. JAYARAJAN

9. JAYAPRAKASAN

10. SUDHANAN

11. RATNA

12. SARASU

13. VALSALA

14. SHAILA

15. VIJI

16. VETTUKATTUKUNNIYIL MAMMED, CHEMANCHERRY
AMSOM AND DESOM, QUILANDY TALUK.

17. VERANKUTTY DO.
DO. DO.

18. AHAMMED, DO.
DO. DO.

19. HAMSA, DO.
DO. DO.

20. PRIYESH, S/O.ARJUNAN, PURATHANA VEETTIL,
ELATHOOR AMSOM DESOM, KOZIKODE TALUK

21. PREJANA, D/O.ARJUNAN, PURATHANA VEETTIL,
ELATHOOR AMSOM DESOM, KOZIKODE TALUK

(ADDL.R4 TO R15 ARE RESIDING AT ELANTHOOR AMSOM AND DESOM, KOZHIKODE TALUK)

(ADDL.R4 TO R15 IMPLEADED AS L.Rs. OF DECEASED R2 VIDE ORDER DATED 6.9.89 ON C.M.P.NO.105/87)

(R16 TO R19 IMPLEADED AS L.Rs. OF DECEASED R1 VIDE ORDER DATED 16.8.95 ON C.M.P.3063/91)

(ADDL.R20, R21 ARE IMPLEADED VIDE ORDER DATED 20.12.06 ON I.A.NO.2867/04)

(RESPONDENTS 5 TO 15 ARE RECORDED AS THE LEGAL REPRESENTATIVES OF THE DECEASED R4 VIDE ORDER DATED 20.12.06)

BY ADV. SRI C.VATHSALAN-R1,R16 TO 19
ADV.K.P.DANDAPANI FOR R3
ADV.T.K.M.UNNITHAN FOR R4 TO R7, R9 TO R15, R20, R21
P.G.GANAPPAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

A.S.No.96 OF 1991

Dated this the 20th day of December, 2006

JUDGMENT

1. The appellant is the unsuccessful plaintiff in a suit for declaration that a sale deed executed by the first defendant in favour of the second defendant on the strength of the power of attorney granted by the plaintiff to the first defendant is not binding on the plaintiff and for consequential recovery of possession.

2. According to the plaintiff, he had certain mental ailments from 1969 onwards and was not looking after his wife and children and as a consequence of that, there were litigations between the plaintiff and his wife. He suffered an ex parte order for maintenance, which was subsequently set aside. He also faced a suit at the hands of his wife for dissolution of marriage, in which also he was ex parte. He pleaded that he was thereafter taken for treatment and was under the care of one Dr.Basheer for quite some time. His allegation is that

the first defendant is a lady practicing black magic and she attempted to snatch away the properties of the plaintiff and accordingly, obtained Ext.B1 registered power of attorney on 23.4.1974. It is the case of the plaintiff that after the execution of the said power of attorney in favour of the first defendant, the plaintiff was staying away at Cheruvannur and later on came to note that the first defendant permitted her sister, the third respondent, to erect a hut in the property and thereafter a sale deed was also executed by the first defendant in favour the second defendant, exercising authority under Ext.B1 power of attorney.

3. The defendants contested.

4. First defendant, who hold Ext.B1 power of attorney, contended that the suit is filed without any bonafides. She disputed the allegation that Ext.B1 power of attorney was got executed by practicing black magic. According to her, she knows no witch craft. It is the case of the first

defendant that the plaintiff, during the various litigations, had always obtained the help of the first defendant. She pleaded that the plaintiff's mother died when the plaintiff was a child and the first defendant who was living in the adjacent house actually brought up the plaintiff. The plaintiff's relationship with his wife and her father became estranged leading to litigations between them, including for maintenance. According to the first defendant, she had advanced different amounts to the plaintiff to conduct the litigations. The power of attorney was executed by the plaintiff since he was not in a position to look after the properties. According to the first defendant, the third respondent was allowed to erect a hut in the property with the consent of the plaintiff and the third respondent's claim for kudikidappu on that basis was later on turned round by the Land Tribunal. According to her, she maintained regular accounts regarding the income of the properties and the plaintiff had perused the said accounts from the house of the first defendant and the assignment deed in favour of the

second defendant was executed with the consent and approval of the plaintiff and it is done to safeguard the interest of the plaintiff.

5. Second defendant contended that he is a bonafide purchaser of the property for value and that he is not liable to surrender the property. He also adopted the contention of the first defendant.

6. The trial court held that the plaintiff did not succeed in proving that he was of unsound mind when Ext.B1 power of attorney was executed by him and that the second defendant is not liable to be dispossessed. It was accordingly held that the plaintiff is not entitled to the declaration sought for. Consequently, the suit was dismissed.

7. In this first appeal, learned counsel appearing for the plaintiff urged before me that Ext.B1 did not contain any

power to transfer the property, but it was only one authorising the first defendant to manage the properties of the plaintiff in his absence. It was further urged that the materials on record was sufficient to hold that Ext.B1 is not a document executed by the plaintiff in a sound state of mind. It was also urged that the first defendant has, obviously, misused the confidence reposed in her by the plaintiff and has sold out the property, but did not pay to the plaintiff any consideration.

8. Ext.B1 is a document which on the face of it is shown to have been executed by the plaintiff since he could not be in station and had to move in connection with employment and it confers on the first defendant absolute power to deal with all matters relating to the plaintiff, including the production of documents, execution of documents etc. In this context, it is apposite to read the relevant portion of Ext.B1, which is as following:

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9. The aforesaid recitals would categorically show that Ext.B1 contains sufficient authority to execute a document assigning the properties of the plaintiff. It is also to be noticed that Ext.B2 assignment was executed on 23.7.1979 on the basis of Ext.B1 registered power of attorney dated 23.4.1974.

10. The overwhelming evidence available on record, including that of DW4 the defendant, who represented PW2, the plaintiff in the M.C. proceedings and also in the civil suit between him and his wife, was sufficient enough for the court below to rightly disbelieve the version of PW2 as also PW1, who claimed to be a doctor, who allegedly treated PW2, the plaintiff, for his mental ill-health. The court below noticed that, as stated by PW1, the doctor in his cross examination, the various symptoms about which he had spoken in chief examination would only show that the plaintiff had a confused state of mind and he was complaining about sleeplessness. All that apart, Ext.B1 is a

registered document. The due presumptions as to regularity of the official act of registering Ext.B1 attaches credibility to Ext.B1, particularly when the registration proceedings are not impeached or proved to be unworthy of credence. In the aforesaid circumstance, the appreciation of evidence by the court below and the resultant finding that Ext.B1 is not vitiated on any ground as alleged by the plaintiff does not warrant any interference.

11. Having regard to the aforesaid, I necessarily conclude that the appeal has to fail.

12. But it is apparent that Ext.B2 document shows a consideration of Rs.7,500/-, having been obtained by the first defendant as the power of attorney holder of the plaintiff. Though the first defendant has a case that the same was appropriated towards amounts due from the plaintiff to the first defendant, that story is not inspiring particularly when the first defendant did not produce any

accounts though it is pleaded by her that the plaintiff perused the accounts maintained by her. Under such circumstances, the first defendant has a duty in law to return to the plaintiff, the amount received as consideration. With the passage of time, the plaintiff would also be entitled to some amount towards interest on the amount withheld by the first defendant. Faced with such situation, the second defendant, assignee, whose interest is now to save the property for himself, has, through his learned counsel, come out with a suggestion, in my view, rightly, that to satisfy any such equitable consideration, he is willing to pay the plaintiff a reasonable amount and that on the fact situation of this case, it is appropriate that the said amount be fixed at Rs.20,000/-. In my considered view, that is a just and reasonable amount that could be paid to the plaintiff.

13.In the result, while affirming the decree of the trial court, refusing the reliefs sought for in the suit, this appeal is disposed of directing that the second defendant will pay to

the plaintiff an amount of Rs.20,000/- on or before 31.1.2007, failing which the plaintiff will be entitled to recover such amount with interest at the rate of 6% per annum, from 31.1.2007 till the date of recovery. The parties are directed to bear their respective costs in this appeal.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

A.S.NO.96 OF 1991

JUDGMENT

20TH DECEMBER, 2006.

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